REMARKS

Double Patenting Rejection

Claims 1-12 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of co-pending application serial number 09/752112. Because the language of the claims in both applications is still at issue, Applicants have delayed the filing of a terminal disclaimer at this time, but will do so if deemed necessary to overcome this rejection in the future.

Rejections under 35 U.S.C. §103

Claims 1-3 and 7-9:

Claims 1, 2, 5-8, 11 and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Moore et al (U.S. 6,282,581) in view of Katsube (U.S. 6,341,127).

Moore:

Moore describes a communications framework operable to support remote method invocation in a distributed object environment. (Moore, Abstract). In particular, Moore describes Figure 5 (a flow diagram illustrating the data flow of a remote method invocation), at column 10, lines 15-53, in part as:

"... the remote method invocation involves two processes 101a and 101b. A client 301... seeks to invoke a method of an implementation object 309 – existing in the second process 101b.... In step 1, the client 301 initiates the remote procedure call by issuing the method "result=object.foobar(a,b,c)" on the Stub object 303... In step 2, the Stub object 303 converts this call to a distributed apply() function of the RPC_Transport 305. An intervening step of using a Quality of Service (QOS) parameter to select which RPC_Transport 305 to use is discussed below .... In step 3, the RPC_Client 311 establishes a protocol specific binding to the RPC_Server 315 .... i.e., the protocol establishes a communication channel to the second process, e.g., opens a socket, acquires a shared memory segment, or initializes an RS-232 port..."

Moore further describes, at columns 10- column 11, that a CallInfo object is marshaled into the communication channel, and that the CallInfo object can be used to obtain QoS parameters. Thus Moore effectively teaches that an object including any QoS parameters is forwarded to the RPC_Server, using *the communication channel.* There is no mention or suggestion in Moore of the use of a 'side communication channel' as recited in the claims..

The Examiner admits, at page 4 of the office action that "Moore does not explicitly teach the method of claim 1, wherein the flow information is communicated to a classifying router prior to establishment of connection using a side channel, different from the communication channel and incorporating this flow information into the differentiated services classification subsystem of the classifying router to enable proper classification of the remote method invocation..."

The Examiner goes on to state that :

> "... Katsube teaches .... "when it is judged that it is permitted to process the received LSP set up request message ... the boundary router 1012 inquires the resource management unit 4010 as to whether it is possible to secure necessary network resources such as a label (and bandwidth if necessary) or not, so as to judge whether it is possible to accept this LSP set up request. When it is judged that it is possible to accept this LSP set up request, either a message indicating the acceptance of the LSP set up request (which contains an information on a label assigned to the requested stream, etc.) is returned to the boundary router 1021, or the similar LSP set up request message is transmitted from the control message processing unit 4006 to a next hop (downstream) router (such as a router 1015 in the exemplary case shown in Fig. 1) for the requested stream."

The above portion of Katsube thus appears to describe the set up of a label switched path across a boundary, where a boundary node receives a label if a path can be established.

The Examiner goes on to state that the "packet stream can be defined by either one or both of information regarding a source of data packets .... and an information regarding a destination of data packets ... Thus Katsube teaches a boundary router's capabilities including "whether it is possible to secure necessary network resources such as label (and bandwidth if necessary) or not, so as to judge whether it is possible to accept this LSP set up request "...based on class of service and information provided by the source of the data packet..."

The Examiner further states "... Thus, Katsube teaches "wherein the flow information is communicated to a classifying router prior to establishment of connection using a side channel, different from the communication channel and incorporating this flow information into a differentiated services classification subsystem of the classifying router to enable proper classification of the remote method invocation..." Applicants believe that the Examiner is not affording patentable weight to the term 'remove invocation method', as evidenced by the Examiner's combination of art in the rejection.

As stated in M.P.E.P. §2143 "...To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations...." For at least the reasons described below, applicant believes that the combination of Moore and Katsube fails to satisfy the prima facie requirements of an obviousness rejection.

1. <u>No motivation for the modification suggested by the Examiner is found</u>

As stated in MPEP §2144, "The rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See also *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000)"

No persuasive motivation is provided by the Examiner

The rationale provided by the Examiner is that "as Moore is in need of "a particular QoS" requirement..." However, Moore forwards a QoS in a communication channel, and thus applicants cannot see what advantage could be gained by the combination suggested by the Examiner, by including the logic of Katsube, which conditionally established label switched paths. Accordingly, Applicants fail to find the stated motivation persuasive, and submit that for at least this reason, the rejection is improper and should

There is no desirability in the combination of references provided by the Examiner

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)be withdrawn. Applicants can find no reason why one would desire to combine the teachings of a layer 2 protocol in an application layer solution such as Moore's. For this additional reason, applicants submit that no motivation can be found or suggested.

2. There is no reasonable expectation of success resulting from the Examiner's combination of references

Obviousness does not require absolute predictability, however, at least some degree of predictability is required. Evidence showing there was no reasonable expectation of success

may support a conclusion of nonobviousness. *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976) If the Examiner is seeking to modify the teachings of Katsube, which are directed to labels, a layer 2 protocol, to reach a layer 7 application protocol, it should be remembered that "The prior art can be modified or combined to reject claims as *prima facie* obvious as long as there is a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986)" Due to the fundamental differences between layer 2 and layer 7, applicants submit that such a modification of the teachings of Katsube or Moore cannot be made.

The Examiner states, at page 6 of the office action:

"... it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the capabilities of Katsube's boundary router to the "network" of Moore as Moore is in need of "a particular QoS requirement" and "Application can have separate implementations based on QoS parameters (e.g., secure implementation, non-secure implementation)." This will allow in the router device, a, policy information indicating a permitted starting point of a label switching path is stored, and a request message that contains a starting point information indicating a starting point node/network of the requested label switching path and a stream information indicating a desired packet stream to be transferred through the requested label switching path is received. Then, whether or not to permit the set up of the requested label switching path is judged by comparing the starting point information contained in the request message with the stored policy information, and the requested label switching path through the router device for the desired packet stream indicated by the stream information contained in the request message is set up when the set up of the requested label switching path is judged as permitted...."

With all due respect, the above statements cannot be understood by the Applicant. Applicants believe that both Moore and Katsube, being clearly directed at different layers of the network protocol stack, cannot be easily combined to produce and coherent solution, as evidenced by the above paragraph. That is, even if it were true that 'whether or not to permit the set up of the requested label switching path is judged by comparing the starting point information contained in the request message with the stored policy information ..." this provides no solution to the problem of forwarding QoS information to "enable classification of remote method invocations" as clearly recited in the claims.

3. Combination neither teaches or suggests the claimed invention

Applicant's claim 1 recites "*...detecting when a connection carrying high value data for the remote method invocation* is to be created on a communication channel; using a custom socket factory to obtain flow information associated with the detected connection, and to generate a socket therefore, the socket having a socket number associated therewith; *using a side channel, different from the communication channel, to communicate flow information, including the socket number, associated with the detected connection to a classifying router prior to establishment of connection...* incorporating this flow information into a differentiated services classification subsystem of the classifying router *to enable proper classification of the remote method invocation* "

The Examiner appears to have failed to give patentable weight to the fact that the claim is drawn to the handling of a remote method invocations, and has instead provided a reference which deals with selectively establishing label switched paths. Even if the references could be combined, Applicants respectfully submit that the resultant combination would not teach the limitations of the claimed invention.

Neither of the references, in isolation or combination, describes nor suggests either "using a side channel to communicate flow information..." which is used to "enable proper classification of a remote method invocation ..." as recited in the claims. Rather, the portion of Moore relied on by the Examiner as teaching a 'side channel' actually discloses the establishment and use of the communication channel only. Although Katsube talks about streams including flow information, the flow information is not used as recited in the claims, i.e., to "enable proper classification of remote method invocation..."

Accordingly, for at least the reason that the combination of references fails to teach or describe several limitations of the claims, it is respectfully requested that the rejection

be withdrawn. Claims 2 and 4-6 depend upon claim 1, serve to add further patentable limitations to claim 1, but are allowable for at least the reasons put forth with regard to claim 1.

Claim 7 includes limitations similar to those described above which differentiate over the combination of Moore and Katsube. For example, claim 7 recites "...An apparatus for classifying a remote method invocation from a client system that initiates connections to a remote server object using a client and underlying remote method invocation transport code, the apparatus comprising ... a module configured to detect when a connection carrying high value data for the remote method invocation is to be created ... a module configured to use a custom socket factory to obtain flow information associated with the detected connection, and to generate a socket therefore, the socket having a socket number associated therewith ... a module configured to use a side channel to communicate flow information, including the socket number, associated with the detected connection to a classifying router *prior to establishment of the connection*; and a module configured to incorporate this flow information into a differentiated services classification subsystem of the classifying router *to enable proper classification of the remote invocation method when the connection is established...*" Accordingly, for reasons similar to those put forth with regard to claim 1, claim 7 and its associated dependent claims 8 and 10-12 are patentable over the combination of references, and it is respectfully requested that the rejection be withdrawn.

Claims 4 and 10:

Claims 4 and 10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Moore in view of Katsube in further view of Weiss.

The Examiner relies on Weiss as teaching a Java Servlet. Even acknowledging that Weiss mentions a Java Servlet, Applicants maintain their position that the combination of

Moore and Katsube fail to disclose a side channel used as recited in the claimed invention. Weiss does not add any further teachings of such a side channel. Accordingly, dependent claims 4 and 10 are patentable for at least the same reasons as their independent claims.

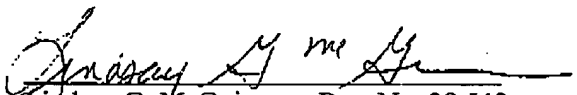
Conclusion

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone the undersigned, Applicants' Attorney at 978-264-6664 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

2/13/2006
Date



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